

ARKANSAS SUPREME COURT

No. 08-433

KARON D. TROTTER, JR. and \$31,130
Appellants

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 14, 2009

PRO SE MOTION FOR
RECONSIDERATION OF DENIAL OF
MOTION TO SUPPLEMENT RECORD
[CIRCUIT COURT OF DREW
COUNTY, CV 2005-56]

MOTION DENIED.

PER CURIAM

After the circuit court entered an order of closure in a forfeiture proceeding against certain currency seized from appellant Karon D. Trotter, Jr., appellant filed a pro se notice of appeal in the circuit court and lodged the record in this court. Appellant filed motions seeking leave to supplement the record with a number of documents and transcripts from other proceedings, which were denied. *Trotter v. State*, 08-433 (Ark. Mar. 12, 2009) (per curiam). He now brings this motion in which he asks this court to reconsider the decision to deny his request to supplement the record.

In his motions to supplement, appellant requested permission to supplement the record with documents that he had abstracted and submitted in the addendum of his brief, and which included transcripts of hearings from his criminal trial, testimony from another case involving child support payments, and documents that had been filed with the circuit court in this matter after the date the order appealed was signed. In our previous decision we noted that it was not necessary for appellant to supplement the record to include for consideration abstracted testimony that was included within a record previously before this court, such as testimony from appellant's direct appeal. *See Drymon*

v. State, 327 Ark. 375, 938 S.W.2d 825 (1997) (per curiam). Even though we may take judicial notice of evidence that is already on file with this court, we will not review evidence or materials not presented to the fact-finder below. *Jacobs v. State*, 316 Ark. 96, 870 S.W.2d 740 (1994) (per curiam). Appellant made no showing in his motions that any of the materials, that is, those documents that appellant now seeks to include within the record, were before the circuit court for its consideration before rendering the appealed order. Appellant did not show that the materials were properly included within the record.

In his motion for reconsideration, appellant takes issue with our application of case law as cited, arguing that the circumstances were not sufficiently similar. He concedes that the items presented for supplementation were in a proceeding on a writ of garnishment in a separate case from the one appealed. Appellant asserts that the testimony was presented at a hearing in the instant matter, but he does not identify the hearing by the date of occurrence or provide a transcript of a hearing in the matter appealed where the evidence was introduced. He contends that we are mistaken in assumptions as to the findings in other cases, and that we should take into consideration that those findings were inconsistent with the ruling in this matter.

Appellant further alleges that we have overlooked the fact that he provided copies of documents indicating that those documents had been filed in the circuit court. Appellant contends that the judgment in this matter has not been enforced and was disregarded by the court in the garnishment proceeding. Appellant also complains of other actions by the court in the garnishment proceeding, alleging forgery, fraud, violations of due process and lack of jurisdiction. He contends the order of closure should not have been entered after the court in this matter was made aware of the actions in the garnishment proceeding. Appellant prays that we overturn the ruling in the

garnishment proceeding and appears to request that we enforce the order in the proceeding appealed as to disbursement of funds.

Appellant has not provided any basis to indicate that the items he presented for supplementation had been before the court in this matter prior to the ruling appealed. Although he asserts that the evidence was presented to the court during a hearing, the only transcripts he provides are from other proceedings than the one before us. The documents appellant points to were not overlooked, and, as we noted in our prior opinion, the file dates indicate that the items were presented to the court after its order of closure, not before. Appellant again fails to provide any basis to determine the items were presented to the court ordering closure prior to that date.

Appellant's arguments concerning the inapplicability of the cases cited are not persuasive. Despite appellant's assertion to the contrary, we made no assumptions as to any ruling in other proceedings because those rulings are not relevant to the proceedings before us, if not considered by the court ordering closure. We will not provide a holding in a matter, such as the garnishment proceeding appellant references, that is not before us for review. Appellant's request that we enforce the order of closure seeks relief that is not appropriate to an appeal. Because appellant provides no additional basis indicating the items were a part of the record before the court ordering closure, and because he fails to provide any other good cause, we deny the motion for reconsideration.

Motion denied.